11690

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/LSC/2016/0027**
Property	:	**Apartment 19, Park Lane Plaza, 174, Park Lane, Liverpool L1 8HG**
Applicant	:	**Mr I J & Mrs E C Hollows**
Respondents	:	**RG Securities (No 2) Limited**
Type of Application	:	**Reasonableness of service charges** **Reasonableness of administration charges** **Section 27A landlord and Tenant Act 1985** **Section 158 and Schedule 11 Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Mr J R Rimmer** **Mr K Kasambara**
Date of Decision	:	**4th August 2016**

DECISION

ORDER **The determination of the Tribunal in relation to the insurance premiums for the years to 22nd December 2015 and 22nd December 2016 are as set out in paragraph 34, herein.**

The determinations in respect of administration charges are as set out in paragraph 35, herein.

A. Application and background

1. The Applicants are the owners of Flat 19, Park Lane Plaza, a development of residential apartments situated at the Junction of park Lane and Jamaica Street, just to the South of Liverpool City centre. The Respondents (RG Ltd) are the management company servicing the development on behalf of Park Lane Plaza (Liverpool) Management Company Limited. The Applicants hold their interest under the provisions of a long lease, a copy of which has been provided to the Tribunal. It is dated 14th September 2012 and the principal terms are that it is granted from that date until 31st December 2135 at a premium and an initial rent of £195.00 a year, subject to periodic escalation, as provided for in Clause 7,

2 The Applicants seek to establish the reasonableness and payability of a limited number of service charges and administration costs levied by the Respondent.

- The yearly insurance charge for the year ending 22nd December 2016 (£506.62).
- The insurance administration fee for the same year (£19.99).
- A solicitors referral fee (£100.00) and
- Legal costs (£456.00).

3 The lease contains provisions relating to the insurance premium at several points in the lease, that relating to the insurance of the buildings at Park Lane Plaza being found in Clause 5 to the lease, being to landlord's covenant to insure the buildings and the lessee's covenant to pay a reasonable proportion of the cost. The insurance is to be taken against what might be termed "the usual risks" set out in Clause 1.9. The proportion of the premium payable by the tenant is the "additional rent" referred to in Clause 1.1, payable with the initial rent under the demise.

4 Administration charges may arise under either clause 3.27 of the lease whereby the tenant covenants:

To pay to the landlord and the management Company all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors and surveyors) properly and reasonably incurred by the Landlord and the management Company in relation to or incidental to:

3.27.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether such consent or licence is granted refused of proffered subject to any qualification or condition or whether the application is withdrawn

3.27.2 the preparation and service of a notice under the Law of Property Act 1925 section 146 or incurred by reason of or in contemplation of proceedings under the Law of property Act 1925 sections 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

Or, alternatively, under clause 3.28 whereby the tenant covenants:

To be responsible for and to keep the landlord and the Management Company fully indemnified against all damages damages (sic) losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord or the Management Company arising directly or indirectly out of:

3.28.1 any act omission or negligence of the tenant or any persons at the Premises expressly or impliedly with the Tenant's authority and under the Tenant's control or

3.28.2 any breach or non-observance by the Tenant of the covenants conditions or other provisions of this Lease or any of the matters to which the demise is subject.

5 Following the application directions were given by a Deputy Regional Judge of the tribunal as to the future conduct of the matter, in response to which the Respondent filed a statement of case responding to the Application. The Applicants then provided their further response to that statement of case.

6 The Applicants' case in the first instance is that the insurance premiums for the buildings comprising Park Lane Plaza, payable for the years ending 22nd December 2015 and 22nd December 2016 are unreasonable. This argument is based upon considerably cheaper quotations obtained on behalf of the Applicants. The Respondents contest this allegation of unreasonableness at length in its reply of 27th July

7 The Applicants also contest the right of the Respondent or its agents to charge an insurance administration fee, as not being within the meaning of administration charge within the Commonhold and Leasehold Reform Act 2002, section 158 and Schedule 11, and that the solicitors referral fee and legal costs are unreasonable. Although not addressed directly in the original application, the Applicants' witness statement dated 6th July 2016 complies with the directions given on 24th May 2016. The Respondent does not address these matters directly, indicating at page 5 of its reply that the Applicant has made no application under Schedule 11 of the 2002 Act and they are therefore not part of the application.

8 The evidence submitted by the parties and the submissions made are considered further, below.

Inspection

9 On the morning of Thursday 4th August 2016 the Tribunal inspected the development at Park Lane Plaza. It consists of two multi-storey buildings at the junction of Park Lane and Jamaica Street to the South of Liverpool City Centre with easy access to the city. The two buildings are separated by the gated entrance to a large parking area and limited other grounds. The gated access is electronically operated and that to the buildings appears to be of a similar nature. It is the understanding of the tribunal that there are approximately 70 flats in the development as a whole (the premiums in question suggest 69 flats if split equally among them). The buildings are of modern construction the tribunal was able to see the wooden balcony construction involved in the fire damage from 2015, in respect of which repairs are nearing completion.

Evidence and Submissions

10 The Applicants' initial submission in relation to the insurance premium is simple.

- The insurance premiums for the 2 years in question are excessive
- That for the year to 22nd December 2015 was in the sum of £26.636.71 (inclusive of Insurance Premium Tax - IPT). The insurance for that year was placed with Covea Insurance, a subsidiary of a large French conglomerate.
- For the current year the premium was initially £34,950.06 (inclusive of IPT) with Axa Insurance, but this was reduced by negotiation to £25,875.00, evidenced by a new certificate of insurance dated 3rd August 2016.

- The Applicants had obtained alternative quotations for the current year from Allianz Insurance in an amount of £17514.92 and Royal & Sun Alliance £15,331.64, both inclusive of IPT.
- The latter quotations, from the Tribunal's understanding of the papers provided to it, represent like for like cover in the light of the claims history for the building. The detailed history of the matters are set out in the Applicants' witness statement of 5th July.

11 They further argued that there was no justification within the lease for the insurance administration fee for each year. Neither the solicitor referral fee nor the solicitors' costs were justified.

12 In its statement of case in response the Respondent refers to the claims history in respect of the development and particularly the fire in May 2015 (the remedial cost being in the region of £675,000) and this history not likely to be known by those companies quoting at the Applicants' invitation. The reduced premium for the current year should be seen as reasonable.

13 In support of the proposition that the premiums are reasonable, the following points were made:

- The Respondent places insurance on a portfolio basis and not by individual property. Although not receiving commission in respect of this property in isolation the large portfolio of the Respondent allows it to bulk buy and benefit from commissions in respect of its whole portfolio.
- It is not commercially viable, nor reasonable, to expect insurance to be placed on a development by development basis. Such a situation would involve significant time and cost that would eventually be passed on in additional management charges.
- A corporate landlord does not have the same flexibility allowed to private individuals in placing insurance, but does get the benefit of being able to place block policies.
- The Respondent is obligated to obtain insurance at reasonable cost in accordance with the market norm, not necessarily the cheapest available.

14 The Respondent asks the Tribunal to have regard to 5 cases which it suggests provides the tribunal with legal guidance in coming to its determination:

- Daejan Properties Ltd v London LVT [2001] EWCA Civ 1095 – to the extent that, although the general principle that payment prevented dispute, has since been changed by amendment of the landlord and Tenant Act 1985, the tribunal should note the time between payment and dispute in this case
- Universities Superanuation Scheme Ltd v Marks & Spencer [1999] 1EGLR 13 – where service charge liability has been reasonably incurred the service charge provisions should be interpreted to allow them to be recoverable in full.
- Berrycroft Management Company Ltd v Sinclair gardens Investments (Kensington) Ltd (1996) EWHC Admin 50-
  It is acceptable for a large commercial landlord to place insurance on block policies and if incurred in the normal course of business may be reasonable even if lower premiums may be available elsewhere.
- Havenridge Limited v Boston Dyers Ltd 919940 49 EG 111 whereby, notwithstanding a lower premium may be available elsewhere, the premium that has been paid is recoverable . If only one insurer of repute is approached and a premium negotiated in the ordinary course of business then that premium should be recoverable.

15 As recorded above, the Respondent does not address the issue of the additional administration charges, other than to take the view that there has been no application in respect of them in accordance with Schedule 11 Commonhold and Leasehold Reform Act 2002.

The Law

16 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act which provides:

(1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred, and

(b) where the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

17 Further section 27A landlord and Tenant Act 1985 provides:
(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –
(a) the person by whom it is payable
(b) the person to whom it is payable
(c) the amount which is payable
(d) the date at or by which it is payable, and
(e) the manner in which it is payable

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

18 Under section 158 and Schedule 11 Commonhold and Leasehold Reform Act 2002, paragraph 1(1), "administration charge" means any amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly
(a) For or in connection with the grant of approvals under the lease, or applications for such approvals
(b) For or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord and tenant
(c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.

19 Under paragraph 1(3) a variable administration charge is an administration charge payable by a tenant which is neither-
(a) Specified in his lease, nor
(b) Calculated in accordance with a formula specified in his lease.

20 Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

21 Paragraph 5 then provides for an application to the tribunal in respect of administration charges similar in its terms to section 27A Landlord and Tenant Act 1985.

Considerations.

The insurance premium

22 The Tribunal considers that the overriding principle to be applied in this case is that laid down in Section 19(1) landlord and Tenant Act 1985, that a charge is only recoverable to the extent that it is reasonably incurred. The Tribunal does, of course, remind itself that its duty is not to consider whether any particular (lower) premium would be more reasonably incurred: but rather whether those actually incurred by, or on behalf of, the management company, are themselves reasonably incurred.

23 The Tribunal notes the considerable difference in the premiums charged by Covea for the year to 22nd December 2015 and then initially by Axa for the subsequent year when compared with those quotations subsequently obtained by the Applicants, noting that the Axa premium is subsequently reduced by an amount in excess of £9,000.00 (or about 30%).

24 It is often the case that a party seeking a quotation has some difficulty in matching the precise terms of his request with the terms of insurance currently in operation, but the tribunal is satisfied from what it has read in the papers submitted to it that the final quotations obtained by the Applicants very much match the terms of the insurance obtained from Covea and Axa, reflecting also a more than sufficient disclosure of the previous claims history. In so far as the Respondent argues that the insurance terms do not reflect a similar risk the Tribunal disagrees.

25 Are the two premiums, one of £23,636.71 and the other of £34,950.06 (reduced to £25,875.00) therefore reasonably incurred? The Tribunal is minded to consider that they are not.

- Even after having regard to the reduction obtained in respect of the premium for the current year there is a difference of over £8000.00 between the higher of the two quotations obtained by the Applicants and the final premium paid to Axa.
- At some point the Tribunal is sure that actions of the management company can cross the Rubicon to unreasonableness. Without having to define with precision where that crossing takes place the Tribunal is satisfied that a difference of over 30% is sufficient evidence that this has happened.

- The Tribunal is concerned to note that it is given very little by way of information from the Respondent indicating any significant proactive steps taken in relation to the premium for the current year. It finds this surprising given the incident in May 2015 and how that might have affected the assessment of the risk.
- The Tribunal is not persuaded, given the significant difference between what has been paid and what might have been obtainable, by the argument that the Respondent gains any significant benefit from placing a block policy, or policies, compared to what might be obtainable on a wider examination of available premiums.
- The Tribunal does accept that additional management costs might be incurred, but suspects they should be a mere fraction of what the saved premium would be. In any event it would appear that the insurance premium charge for each year reflects an income in relation to the whole development of approximately £1400.00 a year for this work already
- A careful examination has been required as to whether the Applicants make a case in relation to the premium for the year to December 2015, given that there is no evidence of what might have been charged elsewhere for that year. The Tribunal is however entirely satisfied that upon the evidence presented to it, the circumstances that have occurred since that policy was entered into and the amounts charged or quoted for the current year in comparison to the Covea premium a significantly lower premium could have been obtained.

26 Consideration has been given to those cases brought to the attention of the Tribunal and it has taken the following views.

- Following the amendment of the Landlord and Tenant Act 1985 the Daejan Investments case is of little assistance. The point of the amendment is to allow payment to be made and questions asked later. This helps all parties to engage in a mature reflection upon costs and avoid immediate dispute which would occur if there had to be a withholding of payment to allow an assessment of reasonableness.
- The Tribunal accepts that as a general principle service charge costs, reasonably incurred should be recoverable and that it an aspect of reasonableness that a landlord might look to place block policies and meet premiums that may not be the lowest obtainable. This must, however be subject to the overriding duty to ensure that what has been obtained is reasonable.

Insurance administration fees

27 In relation to this charge, and similarly in relation to the solicitor's referral fee and legal costs (considered further below), the Tribunal were not assisted by any views from the respondent following the statement from the Applicants of 6th July. The argument put forward was that there was no application under Schedule 11 of the 2002 Act.

28 The Tribunal accepts that different forms are available for use by applicants, depending upon the nature of the application being made. Form "Leasehold 1" is designed for use in relation to administration charges, whilst form "Leasehold 3" is designed for use in relation to service charges.

29 The Applicants had chosen to use form 3 to make application in respect of all matters. The tribunal sees no difficulty with that. The application clearly sets out the matters in dispute. The Deputy Regional Judge's directions in respect of all matters are clear. The Applicant's address the charges fully in their statement. The Respondent is not misled in any way. The application must comply with Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (as amended).

30 A copy of the regulation is annexed hereto. So far as the Tribunal is concerned the application submitted by the Applicants complies with those requirements.

31 In the absence of any counter arguments from the Respondent the Tribunal concurs with the views of the Applicant that the insurance administration fee is not one falling within paragraph 1 (1) of Schedule 11 of the 2002 Act (and therefore recoverable to the extent that it is reasonable), nor is it one apparently falling within the other provisions of Clauses 3.27 or 3.28 of the lease. It is therefore not one that is recoverable by the Respondent.

Solicitors referral fees and legal costs

32 These costs do fall to be considered under Schedule 11. They are fees that are not fixed, nor is a formula for their assessment fixed, by the lease and they are incurred in relation to an alleged failure to make payment to the landlord, or a party to the lease (the management company)by a due date . Furthermore they are within the contemplation of clause 3.28. They are therefore administration charges.

33 They are recoverable to the extent that they are reasonably incurred. Again there are no views from the Respondent. The Tribunal is assisted only by the Applicants. The Tribunal is however concerned that a solicitor's referral fee (without any reference to any justification for it) and then legal costs are imposed during what the Tribunal considers the processing of a legitimate complaint (irrespective of what the outcome might be) from the Applicants and dealt with them by considerable expedition. In that situation they are not considered to be reasonable charges reasonably incurred.

Determination

34 **Having concluded that the insurance premiums are not reasonably incurred in respect of the two relevant years it is necessary to establish what might be reasonable. The Tribunal finds the best guide to be the quotations obtained by the Applicants. The Tribunal can't be precise in relation to the earlier year to 22nd December 2015 so takes the view that a rounded figure, erring on the side of caution would be £18,000.00 for each year - £257.14 per year for each apartment, if there are 70 apartments on the development.**

35 **It is therefore determined that the insurance premium for Apartment 19, Park Lane Plaza for each of the years in question shall be £257.14. It is further determined that the insurance administration fee, solicitor's referral fee and legal costs are not recoverable for the reasons set out above.**

Appendix

PART 3

Written documentation, time limits etc

Starting proceedings

26.—(1) An applicant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of application.

(2) Such an application must be signed and dated and, unless a practice direction makes different provision, include—

(a) the name and address of the applicant;

(b) the name and address of the applicant's representative (if any);

(c) an address where documents for the applicant may be sent or delivered;

(d) the name and address of each respondent;

(e) the address of the premises or property to which the application relates;

(f) the applicant's connection with the premises or property;

(g) the name and address of any landlord or tenant of the premises to which the application relates;

(h) the result the applicant is seeking;

(i) the applicant's reasons for making the application;

(j) a statement that the applicant believes that the facts stated in the application are true;

(k) the name and address of every person who appears to the applicant to be an interested person, with reasons for that person's interest;

(l) in agricultural land and drainage cases, a description of all the land or holding to which the application relates;

(m) in agricultural land and drainage cases relating to succession under section 39, 41 or 53 of the 1986 Act—

(i) confirmation that the applicant has given prior written notice of the application to the landlord of the holding and has brought the application to the notice of other persons interested in the outcome of the application; and

(ii) the names and addresses of each person to whom the applicant has provided such notice;

(n) all further information or documents required by a practice direction.

(3) Where an application is made to which a paragraph in a practice direction relating to residential property cases or leasehold cases applies, it must be accompanied by the particulars and documents specified in the relevant paragraph.

(4) In proceedings to appeal a decision to the Tribunal, the application must be accompanied by a copy of any written record of that decision and any statement of reasons for that decision that the applicant has or can reasonably obtain.

(5) The applicant must provide with the notice of application any fee payable to the Tribunal.

(6) This rule does not apply to the extent that rule 28 applies.

(7) This rule does not apply where a form is prescribed for the purposes of starting proceedings in the Tribunal under Part V of the Rent Act 1977(a) (rents under restricted contracts) or Part I of the Housing Act 1988(**b**) (assured tenancies, shorthold and non-shorthold).

(a) 1977 c. 42
(b) 1988 c. 50.